

Introduced by Senator Pavley

February 18, 2011

An act to add and repeal Chapter 3.6 (commencing with Section 81710) of Part 49 of Division 7 of Title 3 of the Education Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 793, as introduced, Pavley. Los Angeles Community College District: design-assist contract pilot program.

Existing law authorizes a community college district governing board to enter into a design-build contract, as defined, until January 1, 2014, in which factors in addition to price and cost may be considered in awarding a contract for the design and construction of a community college facility for an amount that exceeds \$2,500,000.

This bill would establish a design-assist contract pilot program that would authorize the Los Angeles Community College District governing board to enter into a design-assist contract, as defined, for a project with an estimated cost exceeding \$2,500,000. The bill would prohibit expenditure of state funds appropriated for a design-assist capital outlay project until the Department of Finance and State Public Works Board have approved performance criteria and concept drawings. The bill would impose various requirements on the governing board related to the design-assist construction process and would prohibit the governing board from entering into more than 8 design-assist contracts under these provisions before January 1, 2017. If the governing board elects to award a design-assist contract for a construction project, the bill would require the governing board to submit a report to the Legislative Analyst's Office in compliance with a specific provision of existing law.

The bill would require design-assist entities to verify certain information under oath, thereby imposing a state-mandated local program by expanding the scope of an existing crime.

The provisions of the bill would not apply to contracts in effect before the operative date of the bill, and would be repealed on January 1, 2018.

The bill would make legislative findings and declarations as to the necessity of a special statute.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.6 (commencing with Section 81710)
2 is added to Part 49 of Division 7 of Title 3 of the Education Code,
3 to read:

4
5 CHAPTER 3.6. DESIGN-ASSIST ALTERNATIVE PILOT PROGRAM
6

7 81710. (a) It is the intent of the Legislature to provide, as a
8 pilot program in the Los Angeles Community College District, an
9 optional, alternative procedure for bidding and building community
10 college construction projects, known as design-assist.

11 (b) It is the intent of the Legislature that the design-assist
12 procurement, as authorized by this chapter, shall not be construed
13 to extend, limit, or change in any manner the legal responsibility
14 of public agencies and contractors to comply with existing law,
15 except as set forth in this chapter.

16 (c) It is the intent of the Legislature to authorize the Los Angeles
17 Community College District to use the procedures of this chapter,
18 and to receive from the district a report detailing the effectiveness
19 of these procedures.

20 81711. As used in this chapter, the following terms have the
21 following meanings:

1 (a) “Acceptable safety record” has the same meaning as stated
2 in subparagraph (G) of paragraph (2) of subdivision (c) of Section
3 81703.

4 (b) “Best value” has the same meaning as stated in Section
5 81701.

6 (c) “Community college district” means the Los Angeles
7 Community College District.

8 (d) “Design-assist” means a procurement process in which the
9 community college district engages a contractor to assist it and its
10 design professionals in developing the design for, and then
11 constructing, the project.

12 (e) “Design-assist entity” means an individual, a corporation,
13 limited partnership, partnership, or other association that is licensed
14 to act as contractor.

15 (f) “Governing board” means the governing board of the Los
16 Angeles Community College District.

17 (g) “Skilled labor force availability” has the same meaning as
18 stated in subparagraph (F) of paragraph (2) of subdivision (c) of
19 Section 81703.

20 81712. (a) Before entering into any design-assist contract, the
21 governing board shall review the guidelines developed pursuant
22 to this chapter and approve of the use of design-assist pursuant to
23 this chapter.

24 (b) Upon a determination by the governing board that it is in
25 the best interest of the community college district, the governing
26 board may enter into a design-assist contract for any project with
27 an estimated cost greater than two million five hundred thousand
28 dollars (\$2,500,000) if, after evaluation of the traditional
29 design-bid-build process in a public meeting, the governing board
30 makes written findings that use of the design-assist process on the
31 specific project under consideration will accomplish one of the
32 following objectives: reduce comparable project costs, facilitate
33 control over design elements, optimize use of construction means,
34 methods, and technologies, or provide features not achievable
35 through the traditional design-bid-build method.

36 (c) No state funds appropriated for a design-assist capital outlay
37 project may be expended until the Department of Finance and the
38 State Public Works Board have approved performance criteria and
39 concept drawings for the project to be financed from the
40 appropriation for capital outlay.

1 81713. Design-assist projects shall progress as follows:

2 (a) The community college district shall select a design
3 professional duly licensed or registered in this state to perform the
4 services required by the Field Act, as defined in Section 17281,
5 for the project.

6 (b) The community college district shall prepare a request for
7 proposal, or a two-step request for prequalification and proposals,
8 that includes, without limitation, the following:

9 (1) Based on financial statements and experience in the
10 construction of public schools or colleges, a process of
11 prequalification in accordance with subdivisions (a) and (b) of
12 Section 20651.5 of the Public Contract Code pursuant to which
13 each proposer is prequalified by the community college district.

14 (2) All of the information described in subparagraphs (A) to
15 (C), inclusive, of paragraph (2) of subdivision (a) of Section 81703.

16 (3) The form of contract for design-assist services and
17 construction that the successful proposer will be required to
18 execute, which may be either a lump sum contract or a cost plus
19 fee with guaranteed maximum price contract covering all work,
20 including all work of subcontractors, whether awarded by the
21 design-assist entity or by the community college district, and which
22 shall provide that no portion of the work other than general
23 administration, supervision, safety administration, and general
24 cleanup will be self-performed by a design-assist entity or by any
25 entity that is directly or indirectly substantially owned, controlled,
26 or managed by the design-assist entity.

27 (4) A statement whether the work that is to be performed by
28 subcontractors will be awarded by the design-assist entity or the
29 community college district or a combination thereof.

30 (5) At the option of the community college district, whether or
31 not the work to be performed by subcontractors will be awarded
32 by the design-assist entity or the community college district or a
33 combination thereof.

34 (6) A process for prequalification of some or all of the
35 subcontractors for bidding of the work.

36 (7) A procedure for final selection of the design-assist entity
37 based upon any of the following:

38 (A) The lowest price based on any or all of the following:

39 (i) A lump sum price for design-assist preconstruction services.

1 (ii) A lump sum or percentage contractor fee for indirect
2 overhead and profit to construct.

3 (iii) A fixed daily rate, percentage or guaranteed maximum price
4 for direct overhead (general conditions costs) to construct.

5 (B) A best value approach based on price and nonprice criteria
6 and source selection procedures specifically identified in the
7 request for proposal in which those factors listed in subparagraph
8 (C) of paragraph (2) of subdivision (c) of Section 81703 are
9 assigned percentages of the total weight that conform to the
10 percentages in that section and which provides that all responsive
11 proposers, upon completion of evaluation, be ranked from the most
12 advantageous to the least advantageous to the community college
13 district.

14 (c) The governing board shall issue a written decision
15 supporting, and publicly announce, its contract award in the same
16 manner as provided in subparagraphs (D) and (E) of paragraph (2)
17 of subdivision (c) of Section 81703.

18 81714. (a) Any design-assist entity to which a contract is
19 awarded under this chapter shall provide a payment bond pursuant
20 to Sections 3247 and 3248 of the Civil Code for the full price of
21 the design-assist contract and all subcontracts, whether entered
22 into by the design-assist contractor or community college district.

23 (b) Subject to the right of the community college district to limit
24 bidding to subcontractors who have been prequalified pursuant to
25 paragraph (6) of subdivision (b) of Section 81713, all subcontracts
26 shall be awarded in accordance with the process set forth in
27 paragraphs (2) and (3) of subdivision (c) of Section 81704.

28 (c) Without limitation to the community college district's right
29 to withhold payment of amounts in dispute, retention by the district
30 of funds shall conform to the requirements of subparagraphs (A)
31 and (B) of paragraph (4) of subdivision (c) of Section 81704 and
32 the design-assist entity may be permitted substitute securities in
33 accordance with Section 22300 of the Public Contract Code.

34 (d) The community college district shall comply with the
35 requirements of paragraphs (1) to (3), inclusive, of subdivision (d)
36 of Section 81704.

37 81715. The community college district, by June 30, 2012, shall
38 develop guidelines for design-assist projects.

39 81716. The governing board, for each design-assist contract
40 awarded for a project pursuant to this chapter and the construction

1 of which is commenced by the design-assist entity receiving the
2 award, shall submit to the Legislative Analyst's Office a report on
3 the project at the completion of the project that complies with all
4 of the requirements of Section 81707.

5 81717. The community college district shall not commence
6 any additional design-assist project if 60 days have elapsed after
7 completion of a design-assist project without having filed the report
8 to the Legislative Analyst's Office required pursuant to Section
9 81707.

10 81718. This chapter does not exempt design-assist contracts
11 from otherwise applicable provisions of the Public Contract Code
12 unless the exemption is granted expressly, or by necessary
13 implication. Unless expressly set forth in this act, nothing in this
14 act is intended to affect, expand, alter, or limit rights or remedies
15 otherwise available at law.

16 81719. Unless expressly authorized in this chapter, no otherwise
17 applicable provision of the Field Act (Article 3 (commencing with
18 Section 17280) and Article 6 (commencing with Section 17365)
19 of Chapter 3 of Part 10.5 and Article 3 (commencing with Section
20 81050) and Article 7 (commencing with Section 81130) of Chapter
21 1 of Part 49) may be waived, amended, or ignored by the
22 community college district or the design-assist entity.

23 81720. (a) The community college district may enter into no
24 more than eight design-assist contracts prior to January 1, 2017.

25 (b) This chapter does not apply to contracts in effect prior to
26 the operative date of the act that added this section.

27 81725. This chapter shall remain in effect only until January
28 1, 2018, and as of that date is repealed, unless a later enacted
29 statute, that is enacted before December 31, 2017, deletes or
30 extends that date.

31 SEC. 2. The Legislature finds and declares that a special law
32 is necessary and that a general law cannot be made applicable
33 within the meaning of Section 16 of Article IV of the California
34 Constitution because this act will serve as a pilot program for
35 providing the Los Angeles Community College District with the
36 authority to enter into design-assist contracts for the design and
37 construction and there is a need to enact this pilot project on a trial
38 basis only, and to study the implementation of this act in only one
39 community college district, prior to extending the act to every
40 community college district.

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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